

JUDGE DANIELS

08 CV 4558

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

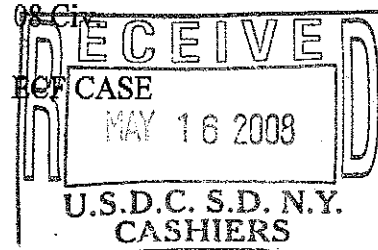
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NEUWA MARITIME CO., S.A.,

Plaintiff,

- against -

OCEANIC PACIFIC LIMITED

Defendant.  
-----X



**VERIFIED COMPLAINT**

Plaintiff, NEUWA MARITIME CO., S.A. (hereinafter "Neuwa Maritime" or "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendant, OCEANIC PACIFIC LIMITED (hereinafter "Oceanic" or "Defendant") alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This claim involves the breach of maritime contract of charter. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331.

2. At all times material to this action, Neuwa Maritime was, and still is, a foreign corporation, or other business entity organized and existing under foreign law.

3. Upon information and belief, Oceanic was, and still is, a foreign corporation, or other business entity organized and existing under foreign law.

4. By a fixture note dated January 8, 2008, (hereinafter "Fixture Note") Neuwa Maritime chartered the vessel "M/V JUI TAI NO. 3" (hereinafter the "Vessel") to Oceanic for the

carriage of minimum 16,000 MT of salt from the loading port of Zhenjiang, China to the discharge port of Batangas, Philippines. *See fixture note attached hereto as Exhibit "1".*

5. The Fixture Note provided "Except raining day, other time will is laytime<sup>1</sup>." *See Exhibit 1.*

6. Pursuant to the terms of the Fixture Note, the vessel arrived at the discharge port of Batangas, Philippines at on February 20, 2008 at 00:10 hours and tendered Notice of Readiness<sup>2</sup>. Discharge of the cargo commenced at 10:40 hours on February 20, 2008, however discharge was suspended for periods on several occasions due to pipe leakage, crane problems, and rain. *See "Laytime of Statement" attached hereto as Exhibit 2.*

7. On March 4, 2008, at 00:00 hours, discharge was stopped after the consignee refused to take delivery of the cargo due to damage to some of the cargo. After some negotiation, discharge of the cargo resumed uninterrupted on March 14, 2008 at 00:00 hours. The Vessel finally completed discharge cargo operations on March 14, 2008 at 10:50 hours. The total amount of laytime used was 19.41 days. *See Exhibit 2.*

8. Under the Fixture Note, the total laytime permitted was 8.015 days. The Fixture Note provides for payment of demurrage at the rate of \$10,000/day. Thus, 11.395 days of demurrage is equivalent to \$113,950.00. Demurrage is due and owing from Oceanic to Neuwa Maritime in the amount of \$113,950.00. *See Exhibit 2.*

9. The Fixture Note provides that Oceanic shall pay demurrage due and owing to Neuwa Maritime upon receipt of Neuwa Maritime's invoice.

10. Neuwa Maritime forwarded an invoice to Oceanic on March 17, 2008 requesting

<sup>1</sup> "Laytime" is the time allowed by the ship owner to the charterer to carry out the discharging operations.

<sup>2</sup> "Notice of Readiness" is notice presented to the shipper or his agent by the master's or ship's agent stating the readiness of the arrived ship to discharge; it determines when the laytime starts to count.

payment of demurrage in the amount of \$113,950.00. To date, Oceanic has refused and/or failed to remit the demurrage payment. *See Invoice attached hereto as Exhibit 3.*

11. Oceanic has breached the terms of the Fixture Note by refusing and/or failing to pay demurrage due and owing to Neuwa Maritime.

12. Pursuant to the Fixture Note, disputes between the parties are to be submitted to arbitration in Hong Kong with English law to apply. Neuwa Maritime will commence arbitration after the commencement of this action and jurisdiction is obtained over Oceanic.

13. This action is brought in order to obtain jurisdiction over Oceanic and also to obtain security for Neuwa Maritime's claims and in aid of Hong Kong arbitration proceedings.

14. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. Section 63 of the English Arbitration Act of 1996 specifically allows for recovery of these items as part of an award in favor of the prevailing party.

15. As best as can now be estimated, Plaintiff expects to recover the following amounts at arbitration as the prevailing party:

a.	Demurrage:	\$ 113,950.00
b.	Interest for 2 years, compounded quarterly at 7%:	\$ 16,965.08
c.	Estimated recoverable legal fees and costs:	\$ 35,000.00
<b>Total:</b>		<b>\$ 165,915.08</b>

16. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the Defendant.

17. The Plaintiff seeks an order from this court directing the Clerk of Court to

issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any proeprty of the Defendant held by any garnishee within the District for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claims as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That pursuant to 9 U.S.C. §§ 201. *et seq.* and/or the doctrine of comity this Court recognize and confirm any foreign judgment or arbitration award rendered on the claims had herein as a Judgment of this Court;

C. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all tangible or intangible property of the Defendant within the District, including but not limited to any funds held by any garnishee, which are due and owing to the Defendant, up to the amount \$ 165,915.08 to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

D. That this Court enter Judgment against Defendant on the claims set forth herein;

E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award Plaintiff its attorney's fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court

may deem just and proper.

Dated: May 16, 2008  
New York, NY

The Plaintiff,  
Neuma Maritime Co., S.A.

By: 

Patrick F. Lennon  
Anne C. LeVasseur  
Charles E. Murphy  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 – phone  
(212) 490-6070 – fax  
pfl@lenmur.com  
acl@lenmur.com  
cem@lenmur.com

**ATTORNEY'S VERIFICATION**

State of New York     )  
                                  )     ss.:     City of New York  
County of New York    )

1.     My name is Charles E. Murphy.
2.     I am over 18 years of age, of sound mind, capable of making this

Verification, and fully competent to testify to all matters stated herein.

3.     I am a partner in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.


4.     I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.

5.     The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.

6.     The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.

7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:     NY, NY  
           May 16, 2008

  
Charles E. Murphy

## EXHIBIT 1

### FIXTURE NOTE

IT IS THIS DAY 08TH JAN 2008 MUTUALLY AGREED BETWEEN OWNERS AND CHARTERERS THE TERMS AND CONDITIONS AS FOLLOWING:

01. MV JUI TAI NO.3 FLAG: PANAMA BUILT: 1977 DWT: 17625MT ON 5 994M 4HON 1 SIDE DECK
- GRT/NRT: 10930/8331MT LOA/BM: 189.10/22.20M G/B CAPA: 21788/21225M3 DRKS 5 120MT WOG
02. CARGO & QUANTITY: MIN 18000MT SODIUM SULPHATE + CHEMICAL PRODUCT IN BAG  
SF: 1.25 WOG 3% MORE CHTRS OPTION UPTO VESSEL'S FULL CAPACITY
03. LOADING PORT: 1SBP, ZHENJIANG, CHINA
04. DISCHARGING PORT: 1SBP, BATANGAS, PHILIPPINES
05. LAYCAN: 21-28 JAN 2008
06. FREIGHT RATE: USD29.00 PMT FIOT TERM BSS1/1
07. FREIGHT 100 PCT PREPAID INTO OWNERS BANK WITHIN 3 DAYS AFTER COMPLETION OF LOADING. FREIGHT TO BE DEEMED AS EARNED WHEN CARGO SHIPPED ON BOARD WITH DISCOUNTLESS & NON-RETURNABLE WHETHER SHIP AND /OR CARGO LOST OR NOT LOST.
08. L/D RATE: CQD / 2000MT PWWD SHINC
09. DETENTION: USD10,000.00 PER DAY OR RATA IF CARGO & DOCUMENTS IS NOT READY UPON VSL'S ARVL AT LOADING PORT.
10. DEMURRAGE/DESPATCH: USD10,000.00 PER DAY RATA/NO DESPATCH AT DISCHG PORT
11. OWRS AGENT AT LOADING/DISCHARGING PORTS
12. OAP IF ANY TO BE FOR CHTRS ACCT
13. SHIPSIDE TALLY OWRS ACCT SHORESIDE TALLY CHTRS ACCT.
14. MASTER TO GIVE 7/5/3/2/1 DAYS ETA NOTICE BEND
15. ANY TAXES/DUES ON CGO CHTRS ACCT SAME ON FRT/VSL OWRS ACCT.
16. LASHING/SECURING/DUNNAGE/SEPERATION IF ANY TO BE FOR CHTRS ACCT
17. SHIP'S CARGO HOLDS SHOULD BE CLEAN DRY AND SUITABLE TO LOAD THE CARGO
18. LIGHTERAGE, LIGHTENING, IF ANY TO BE FOR CHTR'S ACCOUNT. BUT DUE TO VESSEL'S DRAFT REASON, LIGHTENING & LIGHTERAGE IF ANY TO BE FOR OWRS ACCOUNT.
19. COMBINED CARGO IS NOT ALLOWED
- ✓ 20. OWRS ARE NOT RESPONSIBLE FOR CARGO'S DAMAGE
- ✓ 21. EXCEPT RAINING DAY, SUNDAY HOLIDAY, OTHER TIME WILL IS LAYTIME
22. SHORE CRANES IF USED TO BE FOR CHTRS ACCT BUT IF VSL'S DRKS BE OUT OF ORDER OR BREAKDOWN AT DISCHARGING PORT SHORE CRANES TO BE FOR OWRS ACCT.
23. TOTAL COMMISSION 2.50PCT
24. ARBITRATION: ANY DISPUTES ARISING UNDER THIS CHARTER PARTY TO BE REFERRED TO ARBITRATE IN HONGKONG AND ENGLISH LAW TO APPLY.
25. OTHER TERMS AND CONDITIONS AS PER GENCON C/P (AS REVISED 1994)

ON BEHALF OF CHARTERERS

ON BEHALF OF OWNERS

For and on behalf of  
OCEANIC PACIFIC LIMITED  
東海大船務有限公司

*[Signature]*  
Authorized Signature



TO: 貴總經理 PLEASE FAX US FIXTURE NOTE AFTER SIGNED. FAX NO: 852-29-8867



**EXHIBIT 2**

# NEUWA MARITIME CO. S.A.

5FL-2 NO.551 JIOURU 1<sup>ST</sup> ROAD DANMIN DIST., KAOHSIUNG ( 80764 ), TAIWAN R.O.C.

807 高雄市三民區九如一路551號5樓之2

Tel : 886-7-3974257 Fax : 886-7-3974258

O : 陳宏孟

M : NEUWA MARITIME CO. S.A.

DATE : 17th MAR, 2008

## LAYTIME OF STATEMENT

MV "JUI TAI NO.3"V-0802

Cargo & Quantity: 16030.62MT SALT/S.A.L.T/G-SALT

Discharging rate: 2000.00 mts PWW/D SHINC

Discharging port: Batangas, Philippine

NOR Tendered: 0010hrs FEB 20 2008

NOR Accepted: 1300hrs FEB 20 2008

Laytime counting from: 1040hrs FEB 20 2008

Laytime allowed: 8.01531 days

Day	Date	Time worked	Gang	Remark	Laytime used	Laytime Calculation	
		From	To				
Wed	2/20	1040-1230	4/4	0010hrs Vsl arrived n NOR tendered	1:50:00		
		1330-2400	4/4	1040hrs commenced dis	10:30:00	12:20:00	
				1230-1330hrs stopped dis in all hatches due to rain	0:00:00	12:20:00	
Thur	2/21	0000-1100	4/4	1100-1330hrs stopped discharging all hatches due to power generator hydraulic cooling pipe leakage	11:00:00	23:20:00	
		1330-1515	4/4	1515-1600hrs stopped dis in all hatches due to rain	1:45:00	1:05:00	1
		1600-1700	4/4	1700-2400hrs stopped dis in all hatches due to rain	1:00:00	2:05:00	
Fri	2/22	0800-1930	4/4	0000-0800hrs no dis in all hatches due to rain	11:30:00	13:35:00	
		2200-2400	4/4	1930-2200hrs stopped dis in all hatches due to rain	2:00:00	15:35:00	
Sat	2/23	0000-2200	4/4	2200-2400hrs stopped dis operation in all hatches due to rain	22:00:00	13:35:00	2
Sun	2/24	0300-2400	4/4	0000-0300hrs no dis in all hatches due to rain	11:00:00	0:35:00	3

Mon	2/25	0000-1815	4/4	1815-2200hrs stopped dis in all hatches due to rain	18:15:00	18:50:00	
		2200-2400	4/4		2:00:00	20:50:00	
Tue	2/26	0000-1130	4/4	1130-2400hrs stopped dis in all hatches due to rain	11:30:00	8:20:00	4
Wed	2/27	0740-1600	4/4	0000-0740hrs no dis in all hatches due to rain 1600-2400hrs stopped dis in all hatches due to rain	8:20:00	16:40:00	
Thur	2/28	0945-1800	4/4	0000-0945hrs no dis in all hatches due to rain/bad weather	0:15:00	16:55:00	
		1245-2400	4/4	1000-1245hrs stopped dis in all hatches due to rain	11:15:00	4:10:00	5
Fri	2/29	0000-2215	4/4	2215-2345hrs crane 3 stopped/cable wire twisted	22:15:00	2:25:00	6
		2215-2345	3/4		1:08:00	3:33:00	
		2345-2400	4/4		0:15:00	3:48:00	
Sat	3/01	0000-1030	4/4	1030-1200hrs stopped dis in all hatches due to power generator troubles	10:30:00	14:18:00	
		1200-1435	4/4	1435-1630hrs stopped dis in all hatches due to rain	2:35:00	16:53:00	
		1630-2400	4/4		7:30:00	0:23:00	7
Sun	3/02	0000-1930	4/4	1930-2030hrs no dis in all hatches due to rain	19:30:00	19:53:00	
		2030-2400	4/4		3:30:00	23:23:00	
Mon	3/03	0000-0845	4/4	0845-1010hrs crane 2 trouble (cable wire twisting)	8:45:00	8:08:00	8
		0845-1010	3/4		1:04:00	9:12:00	
		1010-2400	4/4		13:50:00	23:02:00	
Tue	3/04	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	9
Wed	3/05	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	10
Thur	3/06	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	11
Fri	3/07	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	12
Sat	3/08	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	13
Sun	3/09	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	14
Mon	3/10	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	15
Tue	3/11	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	16
Wed	3/12	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	17
Thur	3/13	0000-2400	4/4	no dis as per advice by consignee	0:00:00	23:02:00	18

3/14	0000-1050	4/4	1050hrs completed dis	10:50:00	9:52:00	19
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Total laytime used : 19.41 days  
 Less laytime allowed 8.015 days  
 Therefore laytime wasted :  
 Despatch / Rate : 10000

11.3958 days  
 11.3958 usd 113958

Please adv your acceptance or any comment by return in order to arrg concerned things asap.  
 B.R.gds/

**EXHIBIT 3**

## NEUWA MARITIME CO., S.A.

To : 陳宏益  
Attn:  
Fm: G.Mgr Mr Wan Ken Huang

Date: 17TH MAR 2008  
Ref: 2008031701  
Page: 1

Dear Sirs, Good Day!  
RE: M/V "JUI TAI NO.3" - INVOICE

### INVOICE

NAME OF VESSEL: M/V " JUI TAI NO.3"  
PORT OF LOADING: ZHANJIANG, CHINA DATE: 17TH MAR 2008  
PORT OF DISCHARGING: BATANGAS, PHILIPPINE REF NO: 2008031701

NAME OF VESSEL	PARTICULARS	REMARKS
M/V "JUI TAI NO.3" V0802	DEMURRAGE USD 10,000.00/PER DAY	USD 113,958.00
TOTAL	DUE TO OUR COMPANY	USD 113,958.00

PLEASE REMIT THE AMOUNT OF USD 113,958.00 TO FOLLOWING OUR BANK  
ACCOUNT,

KINDLY ARRANGE T/T REMITTANCE TO OUR COMPANY ACCOUNT ASF:

**BANK NAME : BANK OF TAIWAN OFFSHORE BANKING BRANCH**  
**BENEFICIARY : NEUWA MARITIME CO., S.A.**  
**A/C NO. : 069007023307**  
**BANK ADDRESS: No.3, 1 Floor, Pao-Ching Road, Taipei, Taiwan, R.O.C**  
**BANK TELEPHONE : 886 - 7 - 3891036**  
**SWIFT CODE : BKTWTWTP116**

YOUR PROMPT REMITTANCE IS HIGHTLY APPRECIATED

*Wan Ken Huang*